IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6421 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALYANSINH GOPALSINH RAULJI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr S K Patel, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/09/2000

ORAL JUDGEMENT

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the order of detention dated 7.6.1999 passed

by the District Magistrate, Vadodara in exercise of powers conferred on him under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. It has been mainly contended that the petitioner had submitted a representation to the Central Government which was not decided within reasonable time and, therefore, the valuable right of the petitioner of being considered within reasonable time has been lost and, therefore, the further detention of the petitioner is illegal.

3. Rule was issued and the respondents were served. Mr S K Patel, learned AGP appears for respondents no.1, 2 and 3. Mrs P J Davawala, Learned Addl. Standing Counsel appears for respondent No.4. I have heard the learned Advocates for the parties and have perused the papers.

4. Learned Advocate appearing for the petitioner has submitted that if the affidavit filed on behalf of the Central Government is considered, then as per the affidavit, the petitioner's representation was dealt with. The said affidavit shows that another representation from the detenu dated 26.6.2000 was received in the department on 5.7.2000 and in the concerned section on 6.7.2000 through the office of the District Magistrate, Vadodara vide letter dated 3.7.2000. This representation was also considered and rejected by the competent authority on 14.7.2000 and it was conveyed to the concerned authority on 17.7.2000. It says that 15.7.2000 and 16.7.2000, Saturday and Sunday, were closed holidays. This would mean that the representation was received by the said department on 5.7.2000 and it was received by the concerned section on 6.7.2000, but it was considered and decided on 14.7.2000 and, therefore, there was a delay of seven to eight days for the purpose of consideration of the said representation and for the purpose of disposal thereof. It has been contended by the learned Advocate for the petitioner that there was undue delay of 8 days for consideration of the said representation of the petitioner. On this aspect of the case, reliance was placed on a decision in the case of Rajammal v. State of Tamil Nadu & Anr., reported in AIR 1999 SC 684. There the representation was considered after a span of 5 days and the ground was that the concerned Minister was on official tour. The said delay was not found to be reasonable and, therefore, it was held that mere absence of Minister at headquarters was not sufficient to justify the delay. On the said consideration it was observed that the delay remained

unexplained and thus the further detention of the petitioner was vitiated. Same thing has happened in the present case. There is a delay of 8 days. The affidavit is silent on the point as to why the delay was caused in consideration of the said representation. In view of the aforesaid decision of the Supreme Court, I am of the view that in the present case also the principles laid down by the Supreme Court would clearly and squarely apply and accordingly the further detention of the present petitioner would also to be held to be illegal. This shows that the present petition is required to be allowed and the further detention of the petitioner is required to be held to be illegal on this aspect of the case of the petitioner alone.

5. In the result, this petition is allowed. The impugned order of detention dated 7.6.1999 passed by the District Magistrate, Vadodara is quashed and set aside. The detenu is directed to be released forthwith, if not required in any other case. Rule is made absolute accordingly. No order as to costs.

14.9.2000 [D P Buch, J.]
msp